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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,491	04/02/2004	Aliakbar Mobasseri	NEO00187US	2325

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EXAMINER	
ISSAC, ROY P	
ART UNIT	**PAPER NUMBER**
1623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/817,491	MOBASSERI ET AL.	
	Examiner	Art Unit	
	Roy P. Issac	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) *17-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16, 23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of the application

This application claims priority to U.S. provisional applications, 60/460,754 filed on 04, April 2003.

Election/Restrictions

Applicant's election of Group I, claims 1-16 and 23 in the reply filed on 09/10/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Because these inventions are independent or distinct for the reasons set forth in the restriction requirement mailed 03/07/07 and because the response was made without pointing out any supposed errors, the requirement is deemed proper and is therefore made FINAL.

Claims 17-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions. Therefore, claims 1-16 and 23 are examined on the merits herein.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. The recitation "trichloro-glucose-fructose" renders the claims indefinite. It is not clear whether the applicant is referring to a single compound or a group of compounds. Searches in two search engines, Scirus.com and STN indicates that it is the first time the phrase "trichloro-glucose-fructose" is used, and as such the meaning the phrase could not be ascertained from the prior art. Furthermore, the specification does not clearly define the phrase.

Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitations "substantially branched" and "substantially unbranched" renders the claims indefinite. It is not clear what degree of branching would fall into the substantially branched category.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-10, 13, 16 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Menne et. al. (The Journal of Nutrition, May 2000; 130, 5, 1197-1199; PTO-892).

Menne et. al. discloses the use of GFn fructans as prebiotics. A mixture of fructans with n in the range of 2-60 is disclosed. Menne et. al. teaches that the proliferation of bifidobacteria in colon has beneficial effects. (Page 1197, Column 1). Note that the recitation "bifidogenic food additive" is considered an intended use of the composition. Note that it is well settled that "intended use" of a composition or product, e.g., "food additive", will not further limit claims drawn to a composition or product, so long as the prior art discloses the same composition comprising the same ingredients in an effective amount, as the instantly claimed. See, e.g., *Ex parte Masham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161.

Claims 1-12 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Vincent et. al. (WO 02/050311; PTO-892).

Vincent discloses levan in prebiotic compositions derived from lactobacilli strain. (Page 2, summary of the invention). The levan produced was described as having minimal amount of glucose polymer. The compositions do not disclose to have kestose, nystose, fructosylnystse, meioligo, actilight, nutraflora, oligo-sugar, raftilose, raftiline or fibruline.

Claims 1-2, 4-9, and 13 rejected under 35 U.S.C. 102(b) as being anticipated by Feldheim et. al. (Abstract; Fachzeitschriftenverlagsgesellschaft, 2000, 24(4), 162-164; PTO-892).

Feldheim discloses low molecular weight fructans as prebiotic compounds useful with health benefits and as components of functional foods. (Abstract). The disclosed low molecular weight fructans are expected to have low levels of polymerization as claimed herein.

Claims 1-9, 11-12 and 23 are rejected under 35 U.S.C. 102(a) as being anticipated by Bekers et. al. (Process Biochemistry, 38, 2002, 701-706; PTO-892)

Bekers et. al. discloses levans fo ruse in functional foods. Bekers discloses a variety of fructans other than those excluded in claims 1 and 9. (See Fig 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bekers et. al. (Process Biochemistry, 38, 2002, 701-706; PTO-892) in view of Beyts et.al. (WO 89/03182; PTO-892).

Bekers et. al. discloses levans fo ruse in functional foods. Bekers discloses a variety of fructans other than those excluded in claims 1 and 9. (See Fig 1). Bekers et.

al. further discloses that these compounds are nondigestable calorie-free sweetners. (Page 701, Column 2, paragraph 2).

Bekers does not expressly disclose a sweetner composition comprising a trichloro-glucose-frucotse compound. (See page 4, paragraph 2). .

Beyts et. al. (WO 89/03182) discloses a series of fructose and glucose compounds substituted with trichloro moiety as sweeteners. Beyts further discloses combinations of trichloro glucose fructose compounds with other sweetners

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a composition comprising a GFn fructan and a trichloro-glucose-fructose compound since both compounds are known for use as sweeteners. It has been held that it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for same purpose in order to form third composition that is to be used for very same purpose; idea of combining them flows logically from their having been individually taught in prior art. See *In re Kerkhoven*, 205 USPQ 1069, CCPA 1980. As such, one of ordinary skill in the art would have reasonably expected that the combination of two different types of compounds as sweeteners would result in substantially similar or better synergetic effects.

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy P. Issac whose telephone number is 571-272-2674. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1/4/08

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